

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
ALEXANDRIA DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

EDWARD SNOWDEN,

Defendant,

and

MACMILLAN PUBLISHING GROUP, LLC  
d/b/a HENRY HOLT AND COMPANY, *et al.*,

Relief-Defendants.

Case No. 1:19-cv-1197-LO-TCB

**MOTION FOR LEAVE TO FILE SUR-REPLY**

Defendant Edward Snowden respectfully moves pursuant to Local Rule 7(F)(1) for leave of this Court to file the attached sur-reply. There is good cause for this sur-reply because:

1. In the reply memorandum in support of its motion for partial summary judgment, the government makes several arguments for the very first time. Specifically, the government argues, *inter alia*, that a former employee's duty not to *disclose* classified information, rather than his duty to *submit* intelligence-related writing, is at issue in this contract action; that Mr. Snowden has waived his affirmative defenses; and that he is not entitled to discovery as to liability for various reasons.

2. Mr. Snowden accordingly seeks leave to submit the attached short sur-reply to address the new arguments the government has advanced. "The standard for granting leave to file a

surreply is whether the party making the motion would be unable to contest matters presented to the court for the first time in the opposing party's reply." *Hooker v. Sirius XM Radio, Inc.*, No. 4:13-CV-3, 2013 WL 12149171, at \*1 (E.D. Va. May 8, 2013) (citation omitted). "A court has the discretion to allow a sur-reply where a party brings forth new material or deploys new arguments in a reply brief." *Dillard v. Kolongo*, No. 1:16CV1060, 2017 WL 2312988, at \*6 (E.D. Va. May 25, 2017). Mr. Snowden respectfully believes that the Court's resolution of the motion will be assisted by considering his views on the issues raised for the first time in the government's reply, particularly given that the Court has determined not to hold oral argument on this motion.

3. Counsel for the government has declined to consent to this motion.

Wherefore, Defendant respectfully requests the Court to grant his request to file a short sur-reply memorandum on the issues raised by Plaintiff in its Reply as it pertains to Defendant's liability in this action before the Court.

A proposed Order is attached for the Court's convenience.

Dated: December 12, 2019

Respectfully submitted,

Edward Snowden (*by Counsel*)

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 12th day of December, 2019, I will electronically file the foregoing with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to the following:

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